

App. No. 10/037,146

Request for continued examination under 37 CFR §1.114  
Amendment under 37 CFR §1.111**REMARKS**

Claims 1-83 are pending in the application; Claims 1 and 80 are independent claims. Claims 1, 50, 57, and 80 have been amended. Reexamination and reconsideration of the application, as amended, are respectfully requested.

Applicants acknowledge the Notice of Allowance dated 05/24/2004 and the supplemental Notice of Allowability dated 07/12/2004. In a case recently decided by the United States Court of Appeals for the Federal Circuit (CAFC), however, certain language in one of the patents at issue, similar to language originally employed in some of the claims of the instant application, has been construed in a manner differing from that intended by the Applicants. It is not clear whether the CAFC claim construction is specific to the fact patterns of the decided case, or may be applied more generally. Accordingly, the claims in question have been amended so as to ensure that the claims will be construed in the manner originally intended by the Applicants.

The recently-decided case is *Superguide Corporation v. Directv, Inc.* (CAFC 02-1561, -1562, and -1594, decided 02/12/2004). At least within the context of *Superguide*, the Court has interpreted "at least one of" followed by a conjunctive list of items in the patent in suit (US 5038211) to mean at least one of *each* item in the list. In the instant application, the Applicants intended "at least one of" followed by such a list to mean at least one item *from* the list. It is presumed that this was the interpretation of the Examiner as well. Since the claim construction of the CAFC in *Superguide* may at least raise the possibility of a narrower claim construction than that intended by the Applicants, Claims 1, 50, 57, and 80 have each been amended. In Claims 1 and 80, the phrase "at least one of" has been deleted, and the conjunction "and" in the subsequent pair or list of items has been replaced by the conjunction "or". In Claims 50 and 57, the phrase "at least one of the first and second segments" has been replaced by "the first segment or the second segment". In the amended claims, the conjunction "or" is to be construed inclusively (e.g., "a dog or a cat" would be interpreted as "a dog, or a cat, or both"; Bryan A. Garner, Elements of Legal Style p. 103, 2nd ed. 2002), unless: i) it is explicitly stated otherwise, e.g., by use of "either-or", "only one of", or similar language; or ii) two or more of the listed alternatives are mutually exclusive within the context of the claim, in which case "or" would encompass only those combinations involving non-mutually-exclusive alternatives. Applicants believe that this amendment does not change the scope of the amended claims from the originally intended scope. In particular, the amendments set forth herein are not narrowing amendments.

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In view of the above, it is submitted that Claims 1-83 are still in condition for allowance. Reconsideration of the claims is respectfully requested, and allowance of Claims 1-83 at an early date is earnestly solicited.

Respectfully submitted,



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